

March 6, 2020

VIA ECF

Honorable Lorna G. Schofield
U.S. District Court
Southern District of New York
Thurgood Marshall Courthouse
40 Foley Square
New York, NY 10007

Re: *In re Foreign Exchange Benchmark Rates Antitrust*
Litigation Case No. 1:13-cv-07789-LGS (S.D.N.Y.)

Dear Judge Schofield:

Plaintiffs conferred with Defendants regarding the filing of papers in support of Plaintiffs' efforts to effectuate Letters Rogatory to Compel Testimony of certain foreign deponents. Defendants advised Plaintiffs that they seek to redact certain portions of some of the papers in support thereof. Therefore, pursuant to Rules I.B.1 and I.C.3 of Your Honor's Individual Rules and Procedures for Civil Cases, Plaintiffs respectfully request leave to redact portions of the papers in support of Plaintiffs' upcoming Motion for Issuance of Letters Rogatory, including the Declaration of Christopher M. Burke ("Burke Declaration"), and certain exhibits thereto.

Defendants have provided the following explanation regarding their position on the redactions they have proposed.

Settled Defendants and Credit Suisse seek confidential treatment of information falling within two primary categories: (i) non-party identifying information and (ii) "personal data"—including sensitive personal data.

First, with respect to identifying information in the chats relating to third parties, courts in this district have routinely permitted the sealing of such information to protect the privacy interest of non-parties. *See Refco Grp. Ltd., LLC v. Cantor Fitzgerald, L.P.*, No. 13-CV-1654 (RA) (HBP), 2015 U.S. Dist. LEXIS 92301, *32 (S.D.N.Y. July 15, 2015) (collecting cases).

Second, the chats contain "personal data," as defined under various foreign data privacy laws. Although Credit Suisse and the Settled Defendants do not think the foreign data privacy laws apply to them in connection with Plaintiffs' use of these chats, and the law on this subject is not fully settled, several different data privacy statutes might be relevant to the various communications, including, but not limited to, the UK Data Privacy Act, the French Personal Data Protection law, the Japanese law of customer confidentiality, and the European Union General Data Protection Regulation ("GDPR"). We understand that these statutes are each generally consistent with the GDPR, which requires the protection of certain data held by data processors or controllers related to individuals residing in the foreign jurisdictions to which it applies. The GDPR extends its protection to any personal data, defined as "any information relating to an identified or identifiable natural person." GDPR, Art. 4. The GDPR's reference to

Hon. Lorna G. Schofield

March 6, 2020

Page 2 of 2

“any information” includes the person’s name in conjunction with the person’s business or personal email address, a physical address, telephone number, or anything else that can directly or indirectly identify a specific person. *See id.* Accordingly, out of an abundance of caution, Credit Suisse and the Settled Defendants seek to redact such information. The protection of such information is also consistent with the general protection of the privacy interests of non-parties recognized by courts in this district. *See Refco Grp. Ltd., LLC*, 2015 U.S. Dist. LEXIS 92301, at *32; *EEOC v. Kelley Drye & Warren LLP*, No. 10 Civ. 655 (LTS)(MHD), 2012 WL 691545, at *2 (S.D.N.Y. Mar. 2, 2012).

Specifically, Defendants request that certain non-party identifying information and/or personal data be redacted from the Burke Declaration, and Exhibits B-W to the Burke Declaration. The portions that are proposed to be redacted are highlighted in the copies of the Burke Declaration and Exhibits B-W provided.

Plaintiffs do not take a position with regard to the redactions proposed by Defendants. However, to the extent that the Court finds Defendants’ proposed redactions to be appropriate, Plaintiffs also request that the corresponding information be redacted from the Memorandum of Law in Support of Motion for Issuance of Letters Rogatory. The portions that correspond to the information proposed to be redacted by Defendants have been highlighted in the copy of the Memorandum provided.

A hard copy of the papers subject to this letter motion will be delivered to Chambers.

Respectfully submitted,

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